December 20, 2007

Don H. Arnold, Director
Spartanburg County
Environmental Enforcement Department
298 Broadcast Drive
Spartanburg, South Carolina 29303

Dear Mr. Arnold:

In a letter to this office you questioned whether Spartanburg County animal control officers are authorized to issue a county summons to charge a violator for a violation of State law, in particular Title 47, Chapters 1, 3, 5 and 7, that is incorporated into Spartanburg County animal control ordinance no. 592, section 6. Title 47, Chapters 1, 3, 5, and 7 of the State Code deal with provisions prohibiting cruelty to animals, regulation of dogs and other domestic pets by counties and municipalities, rabies control, and provisions dealing with estrays and livestock trespassing or running at large.

Pursuant to S.C. Code Ann. § 4-9-30 counties "within the authority granted by the Constitution and subject to the general laws of this State" were given a list of enumerated powers. Included among these powers is the authorization

> (14) to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts...No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law; except as specifically authorized by such general law.....

The criminal jurisdiction of a magistrate's court extends to offenses that have a penalty of a fine not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. S.C. Code Ann. § 22-3-550. As stated in an opinion of this office dated December 1, 1986, "...a county council is not authorized to adopt an ordinance which would vary general laws or the Constitution of this State." An opinion of this office dated August 16, 2007 referenced a prior opinion of this office dated May 15, 1990 which stated that

> …political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws, which ordinance would be void… Therefore, municipalities and counties are not free to adopt an ordinance which is inconsistent with or repugnant to general laws

> of the State…[P]olice ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or ordinance cannot lower or be inconsistent with a standard set by law… Even where the scope of municipal power is concurrent with that of the state and where an ordinance may prohibit under penalty an act already prohibited and punishable by statute, an ordinance may not conflict with or operate to nullify a state law… Ordinances lowering or relaxing statutory standards relative to offenses are void as in conflict with state law and policy…(Also)…municipalities lack the authority to adopt ordinances and provide penalties…that either increase or decrease the penalty provided for the same offense by the general law.

Article VIII, Section 14 of the State Constitution relating to local government states that

> (i)n enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside...(5) criminal laws and the penalties and sanctions for the transgression thereof....

These provisions have been interpreted by the State Supreme Court to provide that local governments may not enact ordinances that impose greater or lesser penalties than those established by state law. City of North Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991); Terpin v. Darlington County Council, 286 S.C. 112, 332 S.E.2d 771 (1985). As stated in another prior opinion of this office dated December 5, 1990,

> [c]ounties and municipalities are political subdivisions of the State and have only such powers as have been given to them by the State, such as by legislative enactment. Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950). Such political subdivisions may exercise only those powers expressly given by the State Constitution or statutes, or such powers necessarily implied therefrom, or those powers essential to the declared purposes and objects of the political subdivision. McKenzie v. City of Florence, 234 S.C. 428, 108 S.E.2d 825 (1959). In so doing, however, political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws. Central Realty Corp. v. Allison, 218 S.C. 435, 63 S.E.2d 153 (1951); Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928).

Another opinion dated May 1, 2007 quoting an earlier opinion stated that "...an ordinance cannot hamper the operation or effect of a general state law but instead must be in harmony with the State law."

An opinion of this office dated February 1, 2006 dealt with the question of whether a county could enact an ordinance against speeding that established civil penalties and remedies for that violation. The opinion noted that "...local governments may not enact ordinances that impose greater or lesser penalties than those established by state law." Therefore, political subdivisions are free to adopt an ordinance as long as such ordinance is not inconsistent with or repugnant to general laws of the State, including penalty provisions. Another opinion of this office dated October 5, 1973 noted that

> ...while it is clear that...(a municipality)...has the power to pass public health ordinances and that those municipal ordinances can incorporate by reference already existing state code provisions,...the sole effect of the enactment of such ordinances would be needless duplication.

Consistent with the above, the county ordinance referenced by you regarding animal control cannot conflict with State law or establish standards lower or inconsistent with State law. Also, the Spartanburg ordinance cannot impose greater or lesser penalties than those established by State law for the same offense.

As to the use of a county ordinance summons, S.C. Code Ann. § 56-7-80 states that

> (A) Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons...
>
> (B) The uniform ordinance summons may not be used to perform a custodial arrest. No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons...
>
> (D) Service of a uniform ordinance summons vests all magistrates' and municipal courts with jurisdiction to hear and dispose of the charge for which the ordinance summons was issued and served.
>
> (E) Any law enforcement officer or code enforcement officer who serves an ordinance summons must allow the person served to proceed without first having to post bond or to appear before a magistrate or municipal judge. Acceptance of an ordinance summons constitutes a person's recognizance to comply with the terms of the summons...
>
> (G) This statute does not prohibit a county or municipality from enforcing ordinances by means otherwise authorized by law.

Therefore, consistent with such, a magistrate's court would hear and dispose of a charge for which a county summons was issued. Again, as referenced previously, pursuant to Section 4-9-30, counties are authorized to enact ordinances whose penalties do not exceed the penalty jurisdiction of magistrates' courts. Again, such penalty limit is a fine of five hundred dollars or imprisonment not exceeding thirty days, or both.

In examining the provisions of Title 47, Chapters 1, 3, 5, and 7, those provisions you wish to incorporate as county ordinances, it does not appear that the adoption of such State statutory provisions as county ordinances and the use of a county summons to cite for violations of such would be workable. While several provisions include a penalty that is within the magistrates's court, such as S.C. Code Ann.

§§ 47-1-60, 47-1-70, 47-1-125, 47-1-210, 47-3-50, 47-3-75, 47-3-210, 47-3-930, 47-5-200, 47-7-40, 47-7-110, 47-7-120, 47-7-160, other provisions include penalty provisions that exceed a magistrates' court jurisdiction. See, e.g.: S.C. Code Ann. §§47-1-40, 47-1-50, 47-3-440, 47-3-630, 47-3-760, 47-3-950, 47-3-960. Therefore, unless the county was willing to "pick and choose" from among those State statutory provisions that are within a magistrate's court jurisdiction and enact those provisions as county ordinances since their penalties are within a magistrate's jurisdiction, there could be no wholesale adoption of all provisions of Title 47, Chapters 1, 3, 5, and 7 as county ordinances. As noted previously, county ordinances cannot impose greater or lesser penalties than those established by State law for the same offense. As a result, in the opinion of this office, it does not appear that a county summons could be used to cite for all violations of Title 47, Chapters 1, 3, 5, and 7 since all such provisions could not be adopted as county ordinances. As noted, the Spartanburg ordinance cannot conflict with State law or impose greater or lesser penalties than those established by State law for the same offense.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General